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UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

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GAETANO M. BRIGIDA,
 Plaintiff

v.

Civil Action No. _____

THE BOC GROUP, INC., ANTHONY
 ERIC ISSAC, ROBERT P. STEVENS,
 and WAYNE KOCH,
 Defendants.

MAGISTRATE JUDGE Cohen

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
 DISTRICT OF MASSACHUSETTS:

PLEASE TAKE NOTICE that the Defendants, The BOC Group, Inc., Anthony Eric
 Issac, Robert P. Stevens, and Wayne Koch, hereby serve notice of their removal of the above-
 entitled action to this Court and make the following showing in support of such removal:

PLEADINGS AND PROCEEDINGS TO DATE

1. On or about January 20, 2004, an action was commenced in the Essex County
 District Court of the Commonwealth of Massachusetts, entitled Gaetano M. Brigida v. The BOC
 Group Inc., Anthony Eric Issac, Robert P. Stevens, and Wayne Koch, Civil Action No.
 0336CV1577, by the filing of a Complaint and Civil Action Cover Sheet, copies of which are
 attached hereto as Exhibit A.

2. The first date upon which the Defendants received a copy of said Complaint was
 January 26, 2004. The foregoing Complaint, and Civil Action Cover Sheet, along with a

Summons and Order of Notice and Tracking Order constitute all the process, pleadings, and orders received by the Defendants to date.

FEDERAL QUESTION JURISDICTION

3. The district courts of the United States have original jurisdiction over an action founded on a claim or right arising under the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"), 29 U.S.C. § 1001 et seq. ERISA § 502 (e)(1), 29 U.S.C. § 1132(e)(1) confers concurrent jurisdiction upon the district courts of the United States over claims initiated by plan participants or beneficiaries to recover benefits or to enforce their rights under employee welfare benefit plans, including health plans, governed by ERISA.

4. One of the claims Plaintiff asserts in this action is for alleged denial of notification of rights and benefits relative to continued coverage under Defendant's group medical plan pursuant to "COBRA." Although Plaintiff's Complaint alleges that "COBRA" notification rights are compelled by Massachusetts law, the Complaint does not identify a Massachusetts law upon which Count II is based. Rather, Count II is properly construed as an alleged violation of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). 29 U.S.C. §§ 1161(a) and 1166. Under COBRA, group health plans sponsored by private-sector employers generally are welfare benefit plans governed by ERISA and subject to its requirements for reporting and disclosure. 29 U.S.C. §§ 1166 and 1167(1). Consequently, Plaintiff's claim for denial of notification of COBRA rights and benefits is governed by ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), which provides an exclusive federal cause of action for participants or beneficiaries seeking to recover benefits from an ERISA plan. Causes of action filed in state court which are preempted by ERISA and fall within the scope of ERISA § 502 (a)(1)(B) may be removed to federal court by the Defendants, pursuant to 28 U.S.C. § 1441(b).

5. Defendant is providing notice to the Essex County District Court and Plaintiff of this Notice of Removal in the form attached hereto as Exhibit B.

WHEREFORE, Defendants pray that the above action now pending against it in the District Court of the Commonwealth of Massachusetts in and for the County of Essex, Civil Action No. 0336CV1577, be removed therefrom to this Court.

Respectfully submitted,

THE BOC GROUP, ANTHONY ERIC
ISSAC, ROBERT P. STEVENS, and
WAYNE KOCH
By their attorneys,

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(617) 367-0025
(617) -367-2155 – fax

CERTIFICATE OF SERVICE

I hereby certify that, on this _____ day of February, 2004, I caused a true and accurate copy of the above document to be served upon Plaintiff's counsel, John H. Ronan, Ronan, Segal and Harrington, 59 Federal Street, Salem, MA 01970 by first-class mail, postage prepaid.

Jackson Lewis LLP